

1 COOLEY LLP
2 TIANA DEMAS (admitted *pro hac vice*) (NY Bar No. 4210472)
(tdemas@cooley.com)
3 444 W. Lake Street, Suite 1700
Chicago, Illinois 60606-0010
4 Telephone: +1 312-881-6500

5 COOLEY LLP
MICHAEL G. RHODES (116127) (rhodesmg@cooley.com)
6 JOSEPH D. MORNIN (307766) (jmornin@cooley.com)
3 Embarcadero Center, 20th Floor
7 San Francisco, California 94111-4004
Telephone: +1 415 693 2000

8 Attorneys for Plaintiff
9 Google LLC

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION
13

14 Google LLC,
15
16 Plaintiff,
17
18 v.
19 Nche Noel Ntse,
20 Defendant.

Case No. 5:22-cv-02244

**PLAINTIFF'S MOTION TO AUTHORIZE
ALTERNATIVE SERVICE**

Date: May 19, 2022
Time: 9:00 A.M.
Dept: Civil Law and Motion
Judge: Edward J. Davila

1 **PLEASE TAKE NOTICE** that on May 19, 2022 or as soon thereafter as this matter may
2 be heard before Judge Edward J. Davila in Courtroom 4 at 280 South 1st Street, 5th Floor, San
3 Jose, CA 95113, Plaintiff Google LLC will move this Court for an order under Federal Rule of
4 Civil Procedure 4(f)(3) authorizing service on Defendant Nche Noel Ntse via email and text
5 message. This motion is based upon this notice, the following memorandum of points and
6 authorities, the declaration of Joseph D. Mornin and attached exhibits, the pleadings and papers
7 on file, all other matters of which the Court may take judicial notice, and oral argument of
8 counsel, should the Court request it.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **I. INTRODUCTION**

2 As set forth in Google's Complaint, Defendant Nche Noel Ntse is a Cameroon-based
 3 scammer who controls a network of websites and Google accounts that Defendant uses to defraud
 4 unsuspecting and vulnerable American victims. Compl., ECF No. 1 ¶¶ 1, 32, 35. For example,
 5 Defendant ran (and continues to run) multiple websites that purport to sell adorable puppies,
 6 including familybassethoundhome[.]com, jerrysbassethoundhome[.]com,
 7 maltipoofarmhome[.]com, and emilypuppyfarm[.]com. *Id.* ¶¶ 28–33. In reality, Defendant does
 8 not sell puppies (or any other actual items); instead, Defendant uses the websites and Google
 9 accounts to run multiple non-delivery scams where victims send money and receive nothing in
 10 return. *Id.* ¶¶ 2, 26, 34. Defendant's conduct violate Google's Terms of Service and other
 11 policies, including the Gmail Program Policies, the Google Voice Terms of Service, and the
 12 Google Voice Acceptable Use Policy. *Id.* ¶¶ 3, 17–22, 36.

13 Despite its diligent efforts, Google cannot identify Defendant's precise physical address.
 14 Google therefore brings this motion for permission to serve Defendant via email and text message
 15 under Federal Rule of Civil Procedure 4(f)(3).

16 Alternative methods of service under Rule 4(f)(3) are valid when they are (1) authorized
 17 by a court, (2) not prohibited by international agreement, and (3) likely to provide actual notice to
 18 the defendant. *Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1014–16 (9th Cir. 2002).
 19 Each of these requirements is satisfied here. Defendant is based in Cameroon. Although Google
 20 has many active email addresses and phone numbers for Defendant, Google does not have a
 21 legitimate physical address for Defendant. As explained below, courts routinely authorize service
 22 by email and text message on foreign defendants where physical service is not feasible.
 23 Furthermore, no international agreement prohibits service by email or text message on defendants
 24 in Cameroon. Finally, alternative service would provide Defendant with adequate notice of this
 25 lawsuit, as he conducts his unlawful enterprise entirely online, and according to Google's records,
 26 the three email addresses and the Cameroonian phone number that Google proposes using to
 27 effect service are active. Accordingly, Google respectfully requests that the Court authorize
 28 service by email and text message. *See Pac. Logistics Corp v. Pac. Logistics Priority Mail*, No.

CV-19-05023-PHX-SMB, 2019 WL 12338254, at *1–2 (D. Ariz. Sept. 12, 2019) (authorizing email service on a Cameroonian defendant where plaintiff only had partial physical addresses from third-party subpoena returns, and plaintiff had confirmed email addresses for service were active).

II. BACKGROUND

As noted above, Defendant uses Google’s services, including Gmail, to conduct his fraudulent activity. *See* Compl. ¶¶ 24–26. For example, one US-based victim (“Victim 1”) corresponded with the Gmail account familyhomebassethound@gmail[.]com (“Gmail Account A”) and the Google Voice number (954) 899-0315 (“Google Voice Number 1”), both controlled by Defendant. *Id.* ¶¶ 25–26. After being instructed to pay for the “puppy” by sending \$700 in electronic gift cards, Victim 1 purchased the gift cards and sent the relevant information to Google Voice Number 1. Victim 1 later received a text from Google Voice Number 1 claiming that the delivery company, “Sunshine Express,” needed an extra \$1,500 to deliver the puppy. Victim 1 never received the puppy. *Id.*

Google has thoroughly investigated the network of Gmail and Google Voice accounts, websites, and other accounts associated with Defendant’s non-delivery schemes. *See* Declaration of Joseph D. Mornin (“Mornin Decl.”) ¶¶ 3–5. In the course of this investigation, Google identified three active Gmail addresses used by Defendant: jurgenfernandez7@gmail[.]com (“Gmail Account B”), ogdablfe420@gmail[.]com (“Gmail Account C”), and familyhomebassethound@gmail[.]com. *Id.* ¶ 4–9. Defendant logged in to Gmail Account A on September 19, 2021 and used the account as recently as December 2021. *Id.* ¶ 7. Both Gmail Account B and Gmail Account C have frequent and consistent logins over the past year, including as recently as March 13, 2022 for the former and April 3, 2022 for the latter. *Id.* Google also identified a Cameroonian phone number, +237-672259156 (the “-9156 number”), which is the recovery SMS number for two of these Gmail accounts. *Id.* ¶ 9.¹ On January 27, 2022, Defendant used the -9156 number to verify Gmail Account B via text message. *Id.* ¶ 10. The recent use of these Gmail addresses and the -9156 number provides good reason to believe that Defendant can

¹ 237 is the country code for Cameroon.

1 receive service via these alternative methods.

2 Defendant provided two physical addresses in Cameroon to Google in order to set up a
3 Google Pay account (using the Gmail address jurgenfernandez7@gmail[.]com). *Id.* ¶ 12.
4 However, both of the physical addresses correspond to large areas in the city of Douala,
5 Cameroon, not an actual street address or building. *Id.* ¶ 15. Google has conducted an extensive
6 investigation—using its internal records and open-source information—in an effort to identify a
7 precise physical location or street address where Defendant can be served. *Id.* ¶¶ 15–16. Despite
8 these efforts, Google has not found any such location or address. *Id.* ¶ 16. Accordingly, physical
9 service on Defendant (e.g., by hand, mail, or courier) is not feasible in this case. Google therefore
10 seeks authorization to serve Defendant by email and text message.

11 **III. ARGUMENT**

12 Federal Rule of Civil Procedure 4(f)(3) permits a plaintiff to serve a person in a foreign
13 country “by other means not prohibited by international agreement, as the court orders.” Fed. R.
14 Civ. P. 4(f)(3). Alternative methods of service are valid if they are (1) authorized by a court,
15 (2) not prohibited by international agreement, and (3) “reasonably calculated, under all the
16 circumstances, to apprise interested parties of the pendency of the action and afford them an
17 opportunity to present their objections.” *Rio*, 284 F.3d at 1014–16 (quoting *Mullane v. Cent.*
18 *Hanover Bank & Trust Co.*, 339 U.S. 306 (1950)). Service under Rule 4(f)(3) “is as favored as
19 service available under Rule 4(f)(1) [via the Hague Convention] or Rule 4(f)(2) [under the foreign
20 country’s laws]” and stands “on equal footing” with other methods of international service. *Rio*,
21 284 F.3d at 1015. A plaintiff seeking permission to serve a foreign defendant via alternative
22 methods “need not have attempted every permissible means of service of process before
23 petitioning the court for alternative relief” and instead need only “demonstrate that the facts and
24 circumstances of the present case necessitate[] the district court’s intervention.” *Id.* at 1016.
25 Indeed, courts in this District regularly allow service under Rule 4(f)(3) in the first instance. *See*,
26 e.g., *WeWork Cos. Inc. v. WePlus (Shanghai) Tech. Co.*, No. 5:18-cv-04543-EJD, 2019 WL
27 8810350, at *2–3 (N.D. Cal. Jan. 10, 2019) (Davila, J.) (there is “no requirement that Plaintiff
28 attempt service of Defendant at its physical address as a precondition to the court authorizing

1 alternative service pursuant to Rule 4(f)(3)"); *Cisco Sys., Inc. v. Wuhan Wolon Commc'n Tech.*
 2 Co., No. 5:21-CV-04272-EJD, 2021 WL 4962661 at *12–13 (N.D. Cal. July 23, 2021).

3 As discussed below, service by email and text message does not violate any international
 4 agreement and satisfies due process.

5 **1. Service by Email and Text Message Does Not Violate Any**
 6 **International Agreement.**

7 The primary agreement governing international service is the Hague Convention on the
 8 Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Nov.
 9 15, 1965, 20 U.S.T. 361, T.I.A.S. No. 6638 (the "Hague Convention"). *See Brockmeyer v. May*,
 10 383 F.3d 798, 801 (9th Cir. 2004). However, the Hague Convention does not apply when the
 11 government of the state or territory in which the defendant resides is not a signatory. *See Rio*, 284
 12 F.3d at 1015 n.4. Cameroon is not a signatory to the Hague Convention nor to "any other
 13 international treaty with the United States affecting judicial proceedings." *Pac. Logistics*, 2019
 14 WL 12338254, at *1–2. For these reasons, international law does not prevent the Court from
 15 authorizing email or text message service here.

16 Even if Defendant were in a Hague Convention country, the Convention "does not apply
 17 where," as here, "the address of the person to be served with the document is not known." Hague
 18 Conv., Art. 1; *see also Future Motion, Inc. v. Doe*, No. 21-cv-03022-JSC, 2021 WL 3052594, at
 19 *2 (N.D. Cal. July 20, 2021) (permitting service by email and holding that Hague Convention
 20 "does not apply where the address of the person to be served with the document is not known."
 21 (internal quotations omitted)); *Goes Int'l, AB v. Dodur Ltd.*, No. 14–CV–5666 LB, 2015 WL
 22 1743393, at *3 (N.D. Cal. Apr. 16, 2015) (same).

23 Courts "have generally found that an address is 'not known' if a plaintiff exercised
 24 reasonable diligence in attempting to discover the address and was unsuccessful in doing so."
 25 *Indragro, S.A. v. Nilva*, No. 07–cv–03742 (SDW)(MCA), 2014 WL 1515587, at *4 (D. N.J. Apr.
 26 17, 2014); *see also Future Motion, Inc.*, 2021 WL 3052594, at *2 (granting motion to serve by
 27 email after plaintiff could not locate defendant's address via online search and after defendant did
 28 not respond to plaintiff's email request for physical address); *Zynga Game Network Inc. v. Goh*,

1 4:09-cv-05297-SBA (BZ) at *1 (N.D. Cal. May 28, 2010) (granting motion to serve by email
 2 after plaintiff was unable to confirm defendant’s address from information obtained via third-
 3 party discovery); *but see Keck v. Alibaba.com, Inc.*, 330 F.R.D. 255, 258–59 (N.D. Cal. 2018)
 4 (refusing to allow service via email for additional defendants because, unlike previous motion for
 5 alternative service, plaintiff “has not provided evidence that the locations of the Additional
 6 Defendants are unknowable”).

7 Here, Google has conducted a diligent investigation in an attempt to determine
 8 Defendant’s precise physical address. *See* Mornin Decl. ¶ 16. For example, Google has
 9 extensively searched its internal records that are linked to Defendant, including phone numbers,
 10 email addresses, and IP addresses used to create accounts. *Id.* As discussed above, the only two
 11 addresses Defendant provided (to set up a Google Pay account) are to large areas in Douala,
 12 Cameroon, not a street address or building. *Id.* at ¶¶ 12, 15. Google also has devoted significant
 13 time and resources investigating open source materials that might lead to information about
 14 Defendant’s location. *Id.* Despite these efforts, Google could not identify a precise physical
 15 location or address for Defendant. *Id.* In the unlikely event that Defendant resides in a country
 16 that is a Hague Convention signatory, the efforts Google already expended constitute “reasonable
 17 diligence” to discover an address for Defendant such that alternative service under Rule 4(f)(3) is
 18 warranted. *See Future Motion, Inc.*, 2021 WL 3052594, at *2.

19 **2. Service by Email and Text Message Satisfies Due Process.**

20 Courts in this Circuit routinely find that service via email satisfies due process. *See, e.g.,*
 21 *Pac. Logistics Corp.*, 2019 WL 12338254, at *2 (finding email service on Cameroonian resident
 22 comports with due process); *WeWork*, 2019 WL 8810350, at *2–3; *Fourte Int’l Ltd. BVI v. Pin*
 23 *Shine Indus. Co.*, No. 18-cv-00297-BAS-BGS, 2019 WL 246562, at *1–3 (S.D. Cal. Jan. 17,
 24 2019); *Keck v. Alibaba.com, Inc.*, No. 17-cv-05672-BLF, 2017 WL 10820533, at *2–3 (N.D. Cal.
 25 Dec. 20, 2017); *Cisco Sys., Inc. v. Shenzhen Usource Tech. Co.*, No. 5:20-CV-04773-EJD, 2020
 26 WL 4196273, at *13–14 (N.D. Cal. July 20, 2020).

27 In *Rio Props.*, the Ninth Circuit affirmed a district court’s order authorizing email service
 28 after the plaintiff could not locate a valid physical address for the defendant, which operated an

1 online sports gambling site. In finding that email service satisfied due process, the Ninth Circuit
 2 observed that “when faced with an international ebusiness scofflaw, . . . email may be the only
 3 means of effecting service of process.” *Rio*, 284 F.3d at 1018.

4 Here, Google has identified three recently-accessed email addresses and a phone number
 5 for Defendant. *See* Mornin Decl. ¶¶ 7–10. Under these circumstances, there is a strong likelihood
 6 that email service will “apprise [Defendant] of the pendency of the action and afford [him] an
 7 opportunity to” respond. *Rio*, 284 F.3d at 1016. In addition, “combin[ing]” service via email with
 8 service via text message to Defendant’s phone number will reinforce its effectiveness.” *Juicero*,
 9 *Inc. v. Itaste Co.*, Case No. 17-cv-01921-BLF, 2017 WL 3996196, at *3 (N.D. Cal. June 5, 2017);
 10 *see also Marvici v. Roche Facilities Maint. LLC*, 21 Civ. 4259 (PAE) (JLC), 2021 WL 5323748,
 11 at *4 (S.D.N.Y. Oct. 6, 2021) (approving service via text message as “one piece of a multi-prong
 12 approach to service”).

13 **IV. CONCLUSION**

14 Google respectfully requests that the court authorize alternative service on Defendant via
 15 email at jurgenfernandez7@gmail[.]com, odgablife420@gmail[.]com, and
 16 familyhomebassethound@gmail[.]com, and via text message at +237-672259156.

17
 18
 19 Dated: April 15, 2022

COOLEY LLP

20
 21 By: /s/ Michael G. Rhodes

Michael G. Rhodes

22
 23 Attorneys for Plaintiff
 24 Google LLC